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17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA
20
21 SAN JOSE DIVISION

22 VIDEO SOFTWARE DEALERS and
23 ENTERTAINMENT SOFTWARE
24 ASSOCIATION,

25 Plaintiffs,

26 v.

27 ARNOLD SCHWARZENEGGER, in his
28 official capacity as Governor of the State of
California; BILL LOCKYER, in his official
capacity as Attorney General of the State of
California; GEORGE KENNEDY, in his
official capacity as Santa Clara County
District Attorney; RICHARD DOYLE, in his
official capacity as City Attorney for the City
of San Jose, and ANN MILLER RAVEL, in
her official capacity as County Counsel for
the County of Santa Clara.

Defendants.

No. C 05 4188 RMW RS

**APPLICATION OF COMMON SENSE
MEDIA FOR LEAVE TO
PARTICIPATE IN ACTION AS
AMICUS CURIAE**

Date: March 10, 2006
Time: 9:00 a.m.
Honorable Ronald M. Whyte

Date of Filing: No Date Set

Case No. C 05 4188 RMW RS

Application of Common Sense Media for Leave to Participate in Action as Amicus Curiae

1 **I. INTRODUCTION**

2 By this application, Common Sense Media, a nationally-recognized not-for-profit
3 organization with over 3 million users, seeks leave to participate in this action as amicus curiae.
4 Common Sense Media possesses unique expertise on issues concerning electronic entertainment
5 media and its social, economic and physical impacts on children, as well as parental involvement
6 in children’s media experiences.

7 **II. FACTS**

8 Common Sense Media is the leading non-partisan, not-for-profit organization¹
9 dedicated to improving media and entertainment choices for children and families. As reflected in
10 its name, the organization’s mission is “sanity, not censorship.” Common Sense Media strives to
11 provide unbiased and trustworthy information, practical tools, and respected policy leadership to
12 create a healthier media environment for children and families. Launched in May 2003, Common
13 Sense Media now helps well over 3 million parents, educators, caregivers, and young people a
14 better basis to make better-informed decisions about today’s media. This is accomplished
15 through preparing and publishing detailed reviews, ratings, recommended lists, and viewing tips
16 on movies, TV, music, video games, websites, and books. The organization has reviewed nearly
17 5,000 titles based on the latest research on child development, and we review and analyze all the
18 leading video game titles from a kids and family perspective. Adult and child visitors to its
19 website also contribute reviews. The website posts daily updates on the most recent media
20 releases, as well as important news and research, and emails a weekly newsletter. In the
21 community, Common Sense gives seminars and workshops on media literacy and awareness
22 around California and the country, produces training kits and materials for use and dissemination
23 by national organizations, local groups, and concerned individuals, and maintains a non-partisan,
24 public leadership role on selected issues that affect media’s impact on children and youth. In
25 addition, Common Sense works with many of the nation’s leading public health researchers – in
26 California and across the country – to carefully examine the impact of various forms of media,

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28 ¹ The organization is funded primarily by philanthropic contributions from individual donors and leading national foundations.

1 including video games, on young people. In that role, Common Sense was the lead sponsor of
2 AB 1179, the passage of which created the statute at issue here. Because of its work with and for
3 the parents and educators of children and youth in connection with issues related to media,
4 Common Sense is uniquely qualified to speak to the interests of parents in this case.

5 Common Sense is managed by a team of experts in child advocacy, public policy,
6 education, technology, media, and public health, and is supported by a highly distinguished Board
7 of Directors and Board of Advisors. It is headquartered in the Bay Area, but conducts outreach
8 efforts throughout the state. In particular, James P. Steyer, its CEO and founder, has been a leader
9 in children's media issues for over twenty-five years.² Mr. Steyer founded Children Now, a
10 leading national advocacy and media organization for children, as well as JP Kids, a successful
11 and respected family media company. A long-time faculty member teaching civil rights and civil
12 liberties at Stanford University for the past twenty years, he is also the author of the widely
13 acclaimed book, *The Other Parent: The Inside Story of the Media's Effect on Our Children*. Mr.
14 Steyer is familiar with the work of the leading experts in the field and the research that has been
15 performed on the topic of the media's impact on children in the last twenty years. He is familiar
16 not only with the work of the researchers cited by the parties to this case, but is also familiar with
17 the work of numerous other highly qualified experts whose work has not been cited or discussed
18 by either side.

19 Through its work in California and across the country, Common Sense is also
20 well-acquainted with the broad spectrum of video games available for purchase by young people
21 today. Common Sense is uniquely positioned to comment on this issue because it has a wealth of
22 experience with the newest video game titles. Common Sense reviewers try out the latest video
23 game titles and post their ratings on the organization's Web site each week. Nearly 300 of the
24 newest generation titles have been reviewed by Common Sense staff members. In addition, there
25 are many hundreds of reviews posted by parents, educators and young people familiar with the
26 video games at issue here.

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28 ² Mr. Steyer's curriculum vitae is attached as Exhibit A to his declaration accompanying this application.

1 **III. LEGAL STANDARDS**

2 “The privilege of being heard amicus rests solely within the discretion of the court
3 . . . Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief
4 in a pending case, and, with further permission of the court, to argue the case and introduce
5 evidence . . . There are no strict prerequisites that must be established prior to qualifying for
6 amicus status; an individual seeking to appear as amicus must merely make a showing that his
7 participation is useful to or otherwise desirable to the court.” In re Roxford Foods Litigation., 790
8 F. Supp. 987, 997 (E.D.Cal. 1991)(citation omitted). Various factors considered by courts in
9 determining whether to grant amicus status to a party include the serious nature of the issues
10 involved (Neeley v. Century Finance Co., 606 F. Supp. 1453, 1457 (D. Ariz. 1985)); whether the
11 party has been involved in the events leading to this case and its interest in the issue (Sonoma
12 Falls Developers, L.L.C. v. Nev. Gold & Casinos, Inc., 272 F. Supp. 2d 919, 925 (N.D. Cal.
13 2003)); and whether the party can “assist[] in a case of general public interest, supplementi[] the
14 efforts of counsel, and draw[] the court's attention to law that escaped consideration.” Miller-
15 Wohl Co. v. Commissioner of Labor & Industry, 694 F.2d 203, 204 (9th Cir. 1982)(citations
16 omitted). Thus, “[d]istrict courts frequently welcome amicus briefs from non-parties concerning
17 legal issues that have potential ramifications beyond the parties directly involved or if the amicus
18 has unique information or perspective that can help the court beyond the help that the lawyers for
19 the parties are able to provide.” Sonoma Falls Developers, supra., 272 F. Supp. 2d at 925
20 (citations and internal quotations omitted).

21 **IV. ANALYSIS: COMMON SENSE CAN ASSIST THE COURT THROUGH ITS**
22 **EXPERTISE IN THE INTERESTS OF PARENTS WITH RESPECT TO VIDEO**
23 **GAME PURCHASES BY CHILDREN AND ITS EXPERTISE IN THE EFFECTS**
24 **OF ULTRA-VIOLENT VIDEO GAMES ON CHILDREN**

25 Applying the factors discussed by the courts in deciding applications for leave to
26 participate in pending actions as amicus curiae, we note the following. First, the issues involved
27 in this action, which balance First Amendment rights of children against the interests of the
28 public, including their parents, in protecting children from harm, are unquestionably serious. Cf.
Neeley v. Century Finance Co., 606 F. Supp. 1453, supra (deciding a constitutional question).

1 Second, Common Sense Media has had central involvement in the events leading to this case:
2 Common Sense was a co-sponsor of AB 1179, the passage of which resulted in the statute at issue
3 here. In background memos on both the relevant public health research and parental attitudes
4 which were most central to the video game legislation, Common Sense worked with the Governor
5 and legislators from both parties to explain all aspects of the bill. In addition, Common Sense also
6 worked with a number of the nation's leading 1st Amendment and Constitutional law scholars to
7 help draft the bill.

8 Third, and perhaps most importantly, Common Sense has unique information and
9 perspective that will aid the court in resolving this case. Common Sense, through its Board of
10 Directors, Board of Advisors and management team, is extremely knowledgeable about social
11 and psychological research concerning the impact of ultra-violent media on youth that has not
12 previously been cited or analyzed by the parties. As stated in Mr. Steyer's accompanying
13 declaration, he is abreast of the most current research and most highly qualified experts in this
14 field and will be able to assist the court in providing relevant, helpful information concerning the
15 effects of violent video games on young people. Of particular importance is the fact that Mr.
16 Steyer has access to experts other than those that have been cited in the moving and opposing
17 papers submitted to the court in connection with prior proceedings.

18 Finally, Common Sense Media has a loyal user base of over 3 million people.
19 Common Sense interacts on a weekly basis with thousands of its members through emailed
20 newsletters and website reviews and commentary, as well as in person through the training and
21 workshops Common Sense conducts. Through its work, Common Sense has become intimately
22 familiar with the growing interest of parents in guiding, overseeing and being knowledgeable
23 about their children's experiences with extremely violent images. These parental interests are
24 plainly implicated by the issues presented herein. Not only are the interests of Common Sense's
25 members distinct from those represented by the plaintiffs, whose members produce and market
26 the video games being regulated, but the interests of Common Sense's members are more
27 particularized and therefore different from the general societal interest of the public, which is
28 represented by the defendants in this action. The ramifications of this case directly impact the

1 members of Common Sense and the heart of those members' interests. Cf. Sonoma Falls
2 Developers, supra (amicus status granted where issues in case have potential ramifications
3 beyond the parties directly involved). Based on all the relevant factors, the participation of
4 Common Sense Media as amicus curiae in this action is appropriate.

5 **V. CONCLUSION**

6 For the foregoing reasons, the application of Common Sense Media for leave to
7 participate in this litigation as amicus curiae should be granted.

8 Dated: February 1, 2006

Respectfully submitted,

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10 RITCHIE & DAY, LLP
11 Robert A. Goodin
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13 By /s/Francine T. Radford
14 Francine T. Radford
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